

EVIDENCE & OBJECTIONS

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USING & INTRODUCING TANGIBLE EVIDENCE

TYPES OF EVIDENCE

■ Demonstrative Evidence

- Any visual aid or object used to help witness demonstrate oral testimony
- Models, charts, videos, photographs, diagrams, reenactments/demos

■ Documentary Evidence

- Paper documents, reports, phone records, medical records, employment records, wills, certificates, etc.

■ Physical Evidence

- Guns, drugs, vegetable matter, clothing, DNA, etc.
- AKA real, material, or tangible evidence

■ Testimonial Evidence

ADMISSIBILITY OF EVIDENCE

■ Identification/Authentication

- The proponent must produce “evidence sufficient to support a finding that the matter in question is what the proponent claims it is.” **MRE 901**

■ Relevance

- Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the case. **MRE 401**

Chain of Custody: Physical objects which are relevant and for which the chain of custody is not broken or which are otherwise identified with certainty are admissible in evidence. Matters regarding the chain of custody of evidence are largely within the discretion of the trial court, and absent an abuse of discretion, this Court will not reverse. Should a chain of custody objection arise, the trial court should inquire whether there is any indication or reasonable inference of probable tampering with or substitution of the evidence. ***Wilson v. State*, 574 So. 2d 1324 (1990)**

INTRODUCING EXHIBITS

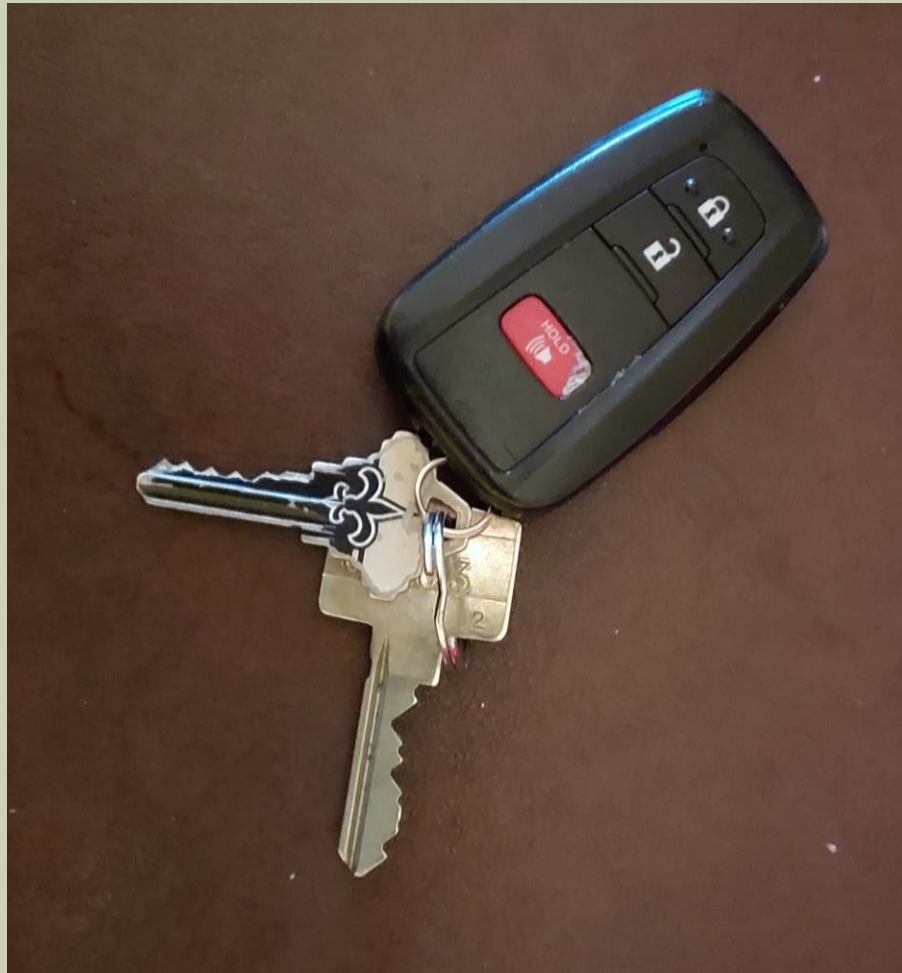
1. Mark for Identification
2. Let Opposing Counsel Examine (Note for Record)
3. Ask for Permission to Approach the Witness
4. Show the Witness the Exhibit
5. Lay the Foundation
 - A. Recognizes Exhibit and It Is In The Same or Substantially Same Condition (Tangible Objects)
 - B. Personal Knowledge and It Fairly and Accurately Depicts What They Saw (Images/Videos)
6. Offer/Introduce Into Evidence
7. Question the Witness Regarding the Exhibit
8. Ask for Permission to Publish

FOUNDATIONS: TANGIBLE OBJECTS

- Witness can identify and recognize the exhibit
 - Do you recognize what's been marked as Defense Exhibit A?
 - How do you recognize it?
 - Is it in the same or substantially similar condition now as it was on the relevant date?
 - Take the witness through chain of custody if necessary



EXERCISE: INTRODUCE DEFENSE EXHIBIT A



FOUNDATION: PHOTOS & VIDEOS

- Witness has personal knowledge of/is familiar with what the image depicts
- Witness was familiar with what the image depicts and the relevant date and time
- Image fairly and accurately depicts the scene as it appeared at the relevant date and time



EXERCISE: INTRODUCE THIS PHOTO, DEFENSE EXHIBIT B

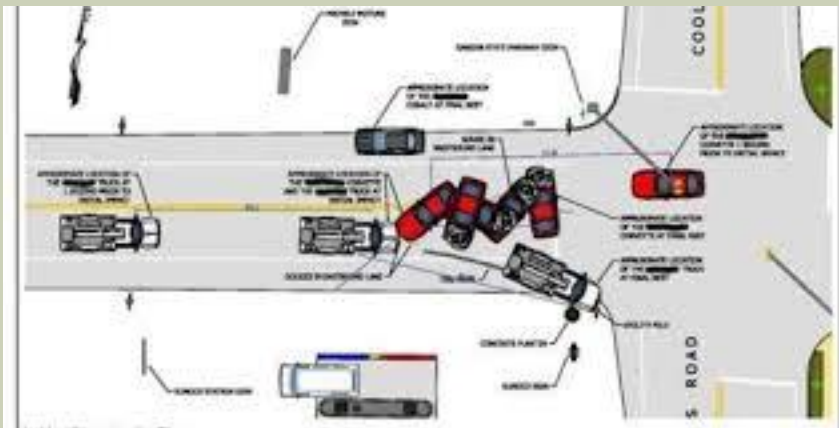


EXERCISE: INTRODUCE THIS VIDEO, DEFENSE EXHIBIT C

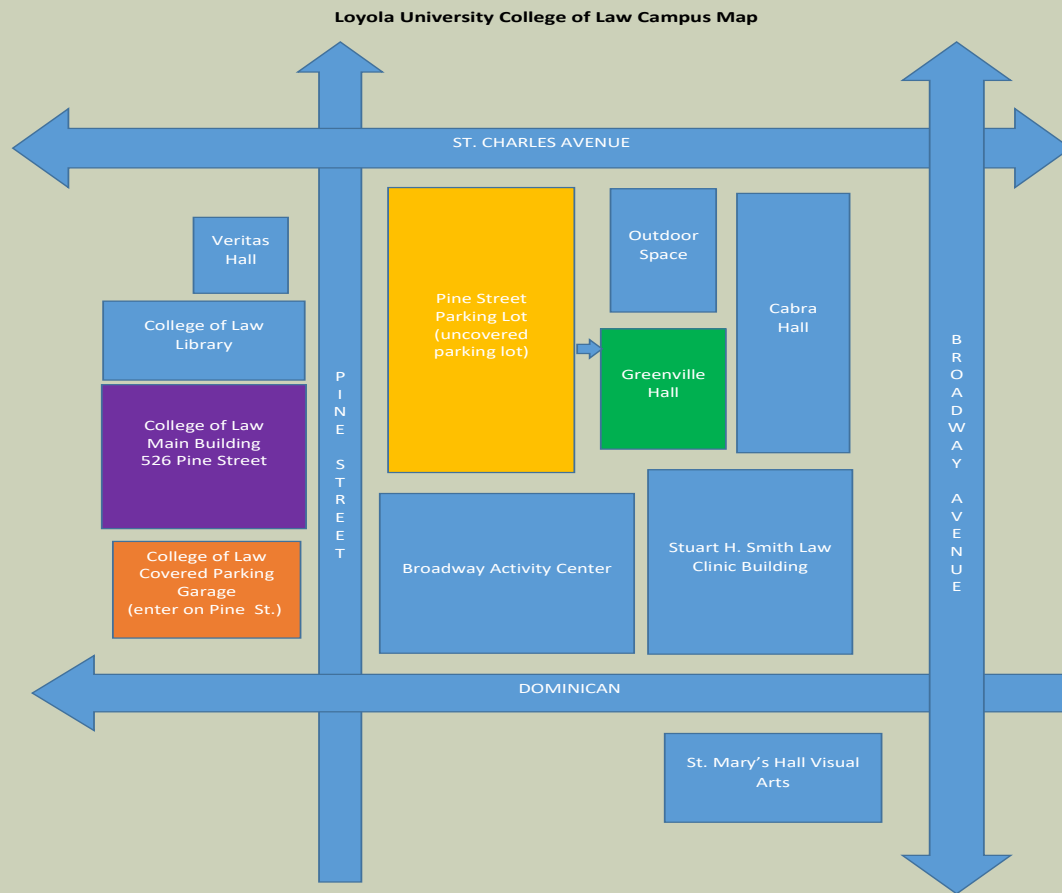


FOUNDATION: DEMONSTRATIVES, MAPS, DIAGRAMS

- Witness is familiar with the demonstrative and the real evidence it depicts.
- The demonstrative is useful in helping witness explain testimony to trier of fact.
- The demonstrative fair and accurately represents, illustrates, or explains the real evidence in all material respects.



EXERCISE: INTRODUCE THIS DEMONSTRATIVE, DEFENSE EXHIBIT D



DOCUMENTARY EVIDENCE

- Is it self-authenticating? If not, follow the same script for other physical evidence.
- Documentary evidence is always an out-of-court statement. Is it hearsay or does it fall under an exception to the hearsay rule?

my will

I Code Dallas want to give what I own to both my sons Zandon Dallas and Kease Dallas 50% each my money cash in the bank Kuta Central Permeta Commonwealth

also my land at Brawa to be sold and split 50% each

also my business either to be sold or ran by my family But money goes to Zandon + Kease

I would like trust funds set up for both boys. But money given every week for them and their mothers.

26-12-11
Thanku go
Code Dallas
26-12-11

Patient History Form

Date of last appointment: 1/10/2012 Time of appointment: 10:00 am Birthplace: Country Hospital

Name: John M. Birthdate: 1/10/1988

Address: 123 Main St. City: Anytown State: TX Zip: 75001

Insurance: Anytown Health Plan

MARITAL STATUS: ☒ Never Married ☐ Married ☐ Divorced ☐ Widowed ☐ Separated ☐ Other

EDUCATION (select highest level attended): ☒ Grade School ☐ HS ☐ HS + GED ☐ College ☐ Postgraduate School

Occupation: Clerk

Number of hours worked/week per week: 40

Referral source for (check one): ☒ Self ☐ Family ☐ Friend ☐ Other Health Professional

Name of person making referral: _____

The name of the physician providing your primary medical care: Dr. J. Smith

Do you have an orthopedic surgeon? ☐ Yes ☒ No If yes, Name: _____

Describe briefly your present symptoms: _____

Date of onset: _____

State symptoms began (approximate): May 2011

Diagnosis: _____

Previous treatment for this problem (include physical therapy, surgery and injections, medications, etc.): _____

Have you had any other problems you have seen for this problem? _____

PHYSIOLOGIC (ARTHRITIS) HISTORY

As any time when you or a close relative had any of the following? (check "yes")

Factorial	Family	Personal	Relative
<input checked="" type="checkbox"/> Ankylosing Spondylitis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Osteoarthritis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Gout	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Rheumatoid Arthritis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Other arthritis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Other arthritis: _____

Physician's name: _____ Title: _____

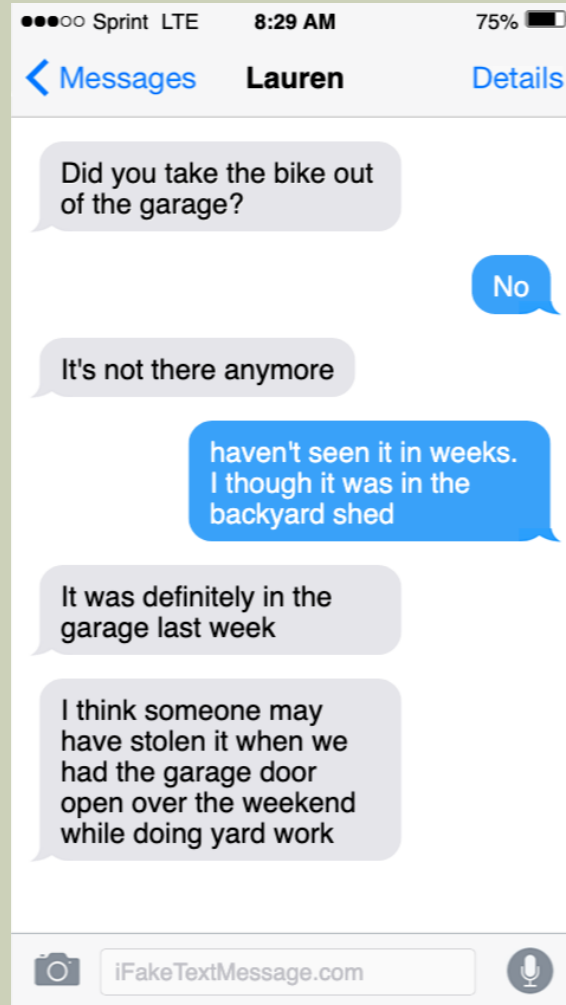


SELF AUTHENTICATION: MRE 902

- (1) Domestic Public Documents That Are Sealed and Signed
- (2) Domestic Public Documents That Are Not Sealed but Are Signed and Certified.
- (3) Foreign public documents.
- (4) Certified Copies of Public Records
- (5) Official Publications
- (6) Newspapers and Periodicals
- (7) Trade Inscriptions and the Like
- (8) Acknowledged Documents
- (9) Commercial Paper & Related Documents
- (10) Presumptions Under a Federal or State Statute
- (11) Certified Records of a Regularly Conducted Activity
- (12) Certified Records Generated by an Electronic Process or System
- (13) Certified Data Copied from an Electronic Device, Storage Medium, or File

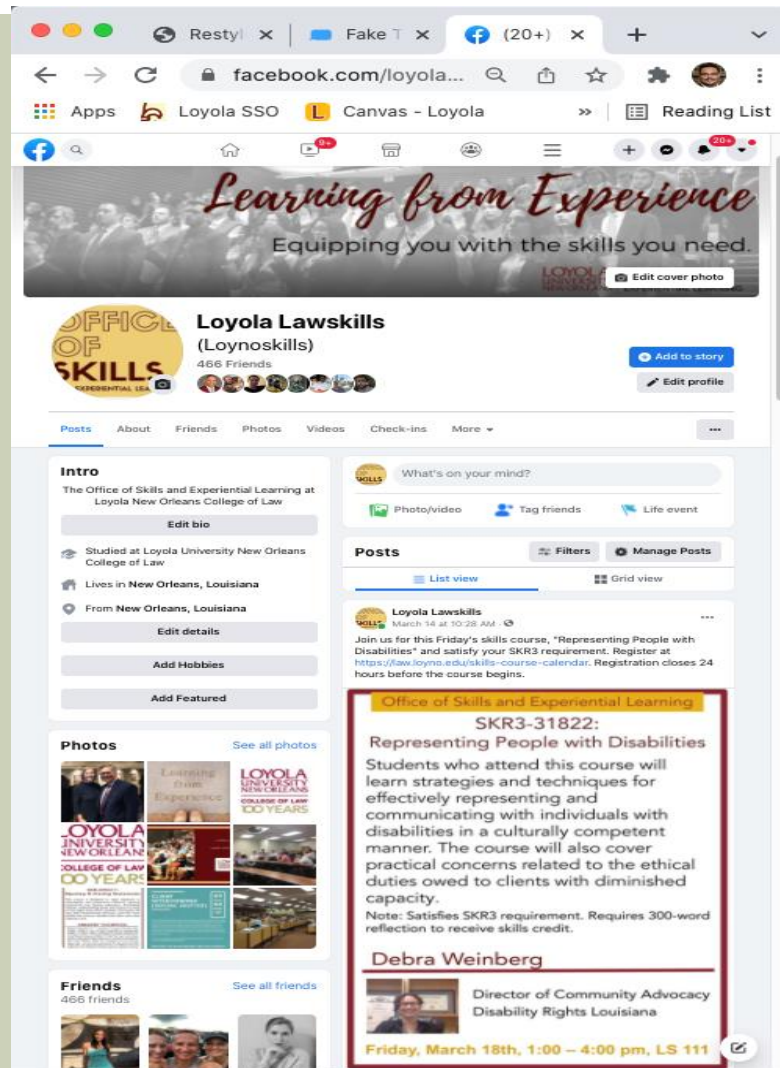
EXERCISE: DEFENSE EXHIBIT E

INTRODUCE THIS TEXT CONVERSATION



EXERCISE: DEFENSE EXHIBIT F

INTRODUCE THIS FACE BOOK PAGE



PRACTICAL ADVICE

- Stipulations
- Organizing Exhibits
- Labeling



**USING
DOCUMENTS/EXTRINSIC
EVIDENCE TO IMPEACH
OR REFRESH
RECOLLECTION**

REFRESHING WITNESS RECOLLECTION

1. Witness says he doesn't remember or doesn't recall.
2. Would looking at _____ refresh your recollection?
3. May I approach your honor?
4. Let the record reflect that I am showing opposing counsel _____.
5. I would like to direct your attention to _____.
Please read it to yourself and let me know when your memory has been refreshed.
6. Is your recollection refreshed?
7. Retrieve document and re-ask original question.

IMPEACHMENT

What are the types of impeachment?

- Impeachment with a Prior Inconsistent Statement
 - Written witness statements or transcripts
 - Oral statements to investigators or other witnesses
- Impeachment by Omission

The script varies slightly depending on the type of impeachment and your goals

THE THREE C'S

- **Commit** the witness to the direct testimony
- **Confront** the witness with the inconsistent statement
- **Complete** the impeachment



IMPEACHMENT

- Impeachment – Crediting the Out Of Court Statement
 - Don't focus on the in-court statement
 - Draw out all the reasons the earlier statement is more reliable than the in-court testimony.
- Impeachment – Highlighting the Inconsistency
 - Focus equally on committing to the direct testimony and confronting with the differences in the prior out-of-court statement
- Impeachment By Omission of an Officer
 - Make the officer seem like the best police report writer ever.

EXERCISE 1

- Amanda is a witness to a car accident who gave your investigator a written statement the day after the accident saying that she saw a red, 4-door SUV, with Texas plates run the red light at the intersection and hit your client's vehicle.
- During direct examination you ask her:

What kind of vehicle was it that ran the red light?

EXERCISE 2

- Jimmy McBro is a witness who made an identification in a robbery outside of The Blind Pig Pub near the Courthouse Square in Oxford. You ask him:

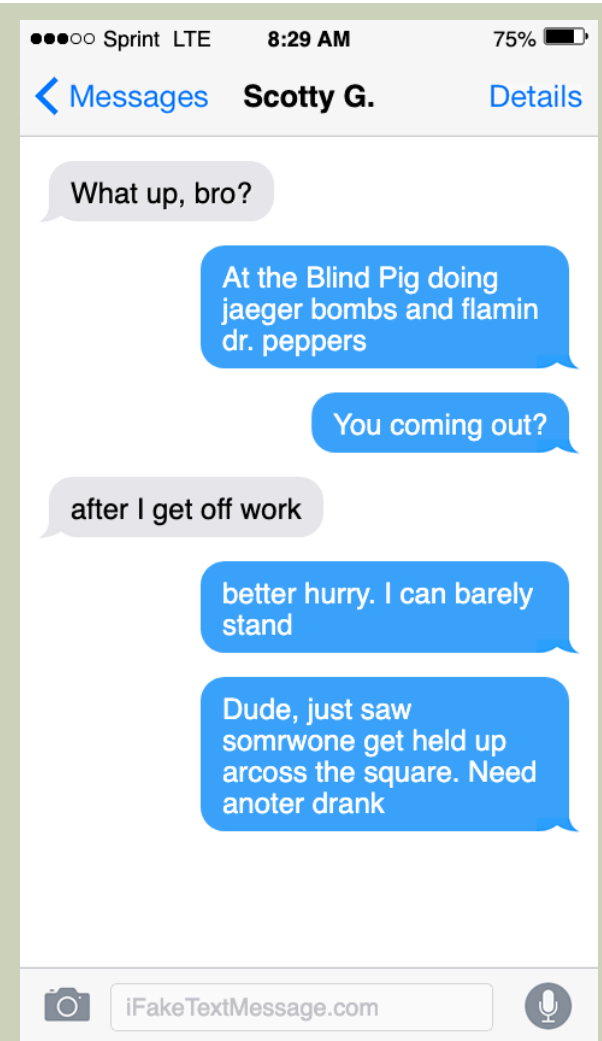
You: You had some drinks that night?

McBro: I guess

You: How many?....

McBro: 2, just a couple of beers

You have a text message exchange between McBro and his friend Scotty G. from that night.



EXERCISE 3

- The witness identifies your client as the perpetrator in open court saying they recognize your client by his full-face tattoo.
- You have a witness statement from the day after the incident in which the witness describes the perpetrator as a white male in his thirties with brown eyes who was wearing a white t-shirt and jeans. There is no mention of any tattoo or other unique identifying characteristics.



MAKING AND OVERCOMING OBJECTIONS

PROFFERING EVIDENCE

Rule 103. Rulings on Evidence

- (a) Preserving a Claim of Error.** A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and:
- 1.** if the ruling admits evidence, a party, on the record:
 - A.** timely objects or moves to strike; and
 - B.** states the specific ground, unless it was apparent from the context; or
 - 2.** if the ruling excludes evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.

MAKING OBJECTIONS

- “Objection!”:
 - Strategically
 - Loudly
 - Confidently
 - Quickly
- State the Grounds
- Let Opposing Counsel Respond
- Be Prepared to Argue Your Point



COMMON OBJECTIONS

- Hearsay
- Relevance
- Vague
- Asked and Answered
- Compound Question
- Assumes Facts Not In Evidence
- Calls for Speculation/Opinion
- Lack of Personal Knowledge

- Argumentative/Testifying
- Prior Bad Acts/Character Evidence
- More Prejudicial Than Probative

Common Objections on Direct

- Leading
- Calls for a Narrative
- Lack of Foundation
- Beyond the Scope (Redirect)

HEARSAY

- A statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted"



COMMON EXCEPTIONS TO HEARSAY

- Not For The Truth of the Matter (Not Hearsay)
- Present Sense Impression
- Then-Existing Mental, Emotional, or Physical Condition
- Excited Utterance
- For Medical Diagnosis or Treatment
- Judgment of a Previous Conviction



EXPLAINING THE INVESTIGATION

Every DA ever: What did victim tell you, officer?

Me: Objection, hearsay!

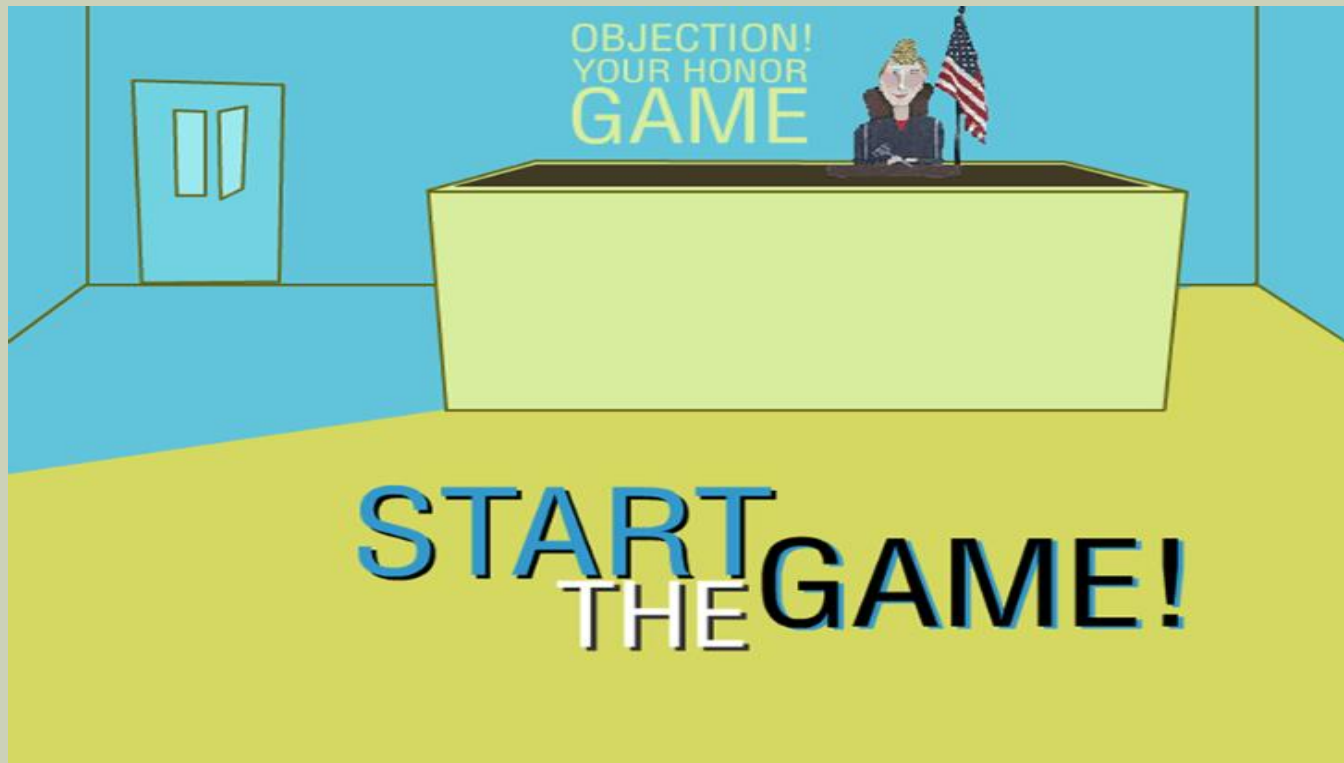
Every DA ever: It's not for the truth of the matter, the officer is just explaining the steps they took in the investigation

If not for the truth of the matter, then it is likely:

- Irrelevant
- More prejudicial than probative

If overruled, don't let them get away with referring to it as substantive evidence in closing.

EXERCISES



https://texaslre.org/games_eng/Objection